

VICTOR SHERMAN (SBN 38483)
LAW OFFICES OF VICTOR SHERMAN
11400 West Olympic Boulevard, Suite 1500
Los Angeles, California 90064
Telephone (424) 371-5930
Facsimile (310) 392-9029
Email: victor@victorsherman.law

Attorney for Defendant
SERHAT DANIEL GUMRUKCU

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SERHAT DANIEL GUMRUKCU,

Defendant.

CA Case No. 22-MJ-02075
VT Case No. 22-CR-581

**Motion to Exclude “Financial
Research Articles” Submitted by
the Government; Memorandum
of Points and Authorities in
Support Thereof; Exhibits**

Defendant Serhat Daniel Gumrukcu moves to exclude and not have the court consider articles submitted by the government. The articles are uncorroborated unreliable hearsay that was prepared by individuals and firms with an interest in driving down the stock price of Enochian Biosciences.

Dated: June 13, 2022

Respectfully submitted,

/s/ Victor Sherman
VICTOR SHERMAN
Attorney for Defendant
SERHAT DANIEL GUMRUKCU

MEMORANDUM OF POINTS AND AUTHORITIES

Recently, the government has submitted a collection of spurious “research reports,” made to resemble news articles, that denigrate not only Dr. Gumrukcu, but also disparage Enochian Biosciences (“Enochian” or the “Company”) and its financial prospects. All of the sponsors of these reports have their own financial interests and disclose that they have taken a short position on the Company’s stock, betting on it to lose value.

Some of these same short-sellers previously released reports, as much as two years ago, hoping that their predictions of deep depressions in the value of Enochian stock would come to pass; that did not happen. Several of these short-sellers have seized upon the allegations in this case to restate and expand on their unsubstantiated claims about Enochian and Gumrukcu.

Generally, newspaper articles are considered hearsay when offered for the truth of the matter asserted. *Bakst v. Cmty. Mem'l Health Sys., Inc.*, 2011 WL 13214315, at *36 (C.D. Cal. Mar. 7, 2011). Even when the actual statements quoted in a newspaper article are nonhearsay, their repetition in the newspaper creates a hearsay problem. See *Larez v. City of Los Angeles*, 946 F.2d 630, 642 (9th Cir. 1991) (“As the reporters never testified nor were subjected to cross-examination, their transcriptions of Gates’s statements involve a serious hearsay problem”). Indeed, statements in newspaper articles constitute double hearsay. *Baskt*, 2011 WL

1 13214315, at *36; Fed.R.Evid. 805. Indeed, even when the original hearsay is
2 characterized as the admissions of a party-opponent, which it is not here, the article
3 will still be inadmissible hearsay. *Id.*

4
5 Moreover, the articles in question here can hardly be given any credibility.
6 They were written by entities with a financial interest in seeing the value of
7 Enochian decline by maintaining short positions of that stock. These articles contain
8 multiple levels of hearsay of unknown origin and authenticity, all of which were
9 directed at rationalizing a short position on the Enochian's stock by disparaging
10 Gumrukcu and the Company. Indeed, even articles without an obvious bias, have
11 been ruled inadmissible and unreliable under the residual hearsay exception. *See*
12 *Larez*, 642–44 (collecting cases). For instance, in *May v. Cooperman*, 780 F.2d 240
13 (3d Cir.1985), Judge Becker, dissenting on other grounds, found that newspaper
14 accounts lacked the ““circumstantial guarantees of trustworthiness”” because they
15 might have “been written from a biased point of view.” *Id.* At 263. Judge Becker
16 added, “[i]t is not unknown for reporters to stretch some facts or omit
17 others....” *Id.* The court in *United States Football League*, 1986–1 Trade Cas. (CCH)
18 ¶ 67,101 at 62,668–669, 1986 WL 5803 (S.D.N.Y. 1986), noted that newspaper
19 articles “are often challenged by interested parties as inaccurate.” *Id.* at 62,668.

20
21 Exemplifying the concerns expressed by other courts, here, as noted, the
22 articles in question in this case are not only rank hearsay, they all expose a bias in
23
24
25
26
27
28

1 seeing the share price of Enochian stock plummet, and cannot be deemed reliable.
2 Indeed, this activity of buying short and attempting to disparage the company has
3 drawn attention, not only from companies alleging that they have been maligned, but
4 also from the DOJ and SEC. Nearly 30 investment firms are now under investigation.
5 They include several of the firms associated with the articles submitted by the
6 government, including White Diamond Research and Hindenburg. Among them are
7 several of the firms and individuals' whose "reporting" has been submitted to the
8 Court by the same federal agency that has them under investigation.
9
10
11

12 These detailed and speculative reports allegedly referencing hard to obtain
13 information from unverified sources, suggested either complete fabrication or
14 resources beyond what would reasonably be expected of a boutique financial
15 research firm. Indeed, one issue allegedly under investigation by the DOJ and SEC
16 is whether such small "research" firms are actually fronts for large hedge funds and
17 money managers seeking to manipulate markets. In addition, many of these
18 "research" companies have been investigated for engaging in other deceptive
19 conduct, such as "spoofing" and "scalping." See Exhibit "A," attached hereto and
20 incorporated herein by reference.
21
22
23

24 Many companies who have been the subject of these obviously biased reports
25 have pushed back, asserting that the research is based on false claims and
26 unsubstantiated conclusions. At least one company has sued. In 2019, United
27
28

1 Health Products, Inc. brought suit against White Diamond Research and others,
2 alleging a “short and distort” scheme in which the defendants took a short position
3 and sought to profit from it by questioning the company’s legitimacy and product.
4 Exhibit B. The complaint alleges shoddy research and the author’s self-interest in
5 defaming the company. The claims for relief include defamation, unjust enrichment,
6 trade libel and interference, unlawful and deceptive practices, and a request for
7 injunctive relief. *Id.*

8 While hearsay is permissible at bail hearings (FRE 1101(d)), the use of this
9 type of grossly unreliable hearsay to support the government’s request for detention
10 only flies in the face of Gumrukcu’s due process rights under the Fifth Amendment,
11 it also denies Gumrukcu the right of cross examination, as is protected by both the
12 Fifth and Sixth Amendments. As things stand, the government is asking the Court to
13 make critical decisions concerning defendant’s liberty based on unsubstantiated
14 claims by interested parties that defendant and his counsel are powerless to challenge
15 or rebut.¹ Indeed, this is not even akin to a witness proffer (often submitted by the
16 government in bail hearings), where if necessary the witness could testify from
17

18
19
20
21
22
23
24 ¹ Admittedly, the exhibits accompanying this motion are also hearsay. However,
25 these exhibits, which explains the DOJ and SEC’s investigation and why they have
26 taken an interest in these financial “research firms” is the only means at Gumrukcu’s
27 disposal to demonstrate the reason that the hearsay that the government has
28 submitted is so dangerous in addition to being improper and unreliable out-of-court
declarations. Moreover, they lack the obvious bias of the materials presented by the
government. Meanwhile, the government is using the articles as a substitute for

(cont'd)

1 personal knowledge.

2 Thus far, the actual evidence against Gumrukcu consists of the criminal
3
4 complaint in the related case against Jerry Banks, 22-MJ-00037 (D.VT), that never
5 mentions Gumrukcu and a single paragraph conclusory indictment. As to the Search
6 and Seizure Warrant submitted by the Government in the case of *U.S. v. Eratay*, 22-
7 mj-00433-JCF, United States District Court District of Nevada. Said warrant
8 undermines the government's case against Dr. Gumrukcu and will be discussed at
9 length by defense counsel at the next hearing. This Court should not countenance
10 the government's attempt to supplement its scant evidence with biased, defamatory,
11 and uncorroborated claims by considering these materials in support of the
12 government's request for detention.
13
14
15

16 CONCLUSION

17 For the foregoing reasons, the articles submitted by the government are
18 hearsay that should not be considered in the Court's detention decision concerning
19 Mr. Gumrukcu.
20

21 Dated: June 13, 2022

Respectfully submitted,

22
23 /s/ Victor Sherman
VICTOR SHERMAN
24 Attorney for Defendant
SERHAT DANIEL GUMRUKCU
25

26 (cont'd from previous page)

27 rigorous criminal investigation, and expects this Court to take as true all such biased
28 and unreliable reports